

Human rights inquiry

Call for evidence response form for representatives of service users/equality groups

We need your help!

We are carrying out an inquiry to find out how public authorities¹ are using the Human Rights Act in Britain.

Under the Human Rights Act, 'public authorities' include both those bodies which would usually be thought of as public authorities (like local authorities) but also private or voluntary organisations when they are carrying out public functions (for example, a private company running a prison). Our inquiry applies to all the public authorities covered by the Act.

We want to hear from you about any examples of public authorities using human rights to improve services or about situations where they have failed to do so.

Do you know of any such organisation that treats its customers with dignity and respect or tailors its services to suit the needs of different individuals?

¹ The House of Lords decided last year that private and voluntary care homes were not public authorities for the purposes of section 6 of the Human Rights Act, even where they were publicly-funded – see *YL (by her litigation friend the Official Solicitor) (FC) (Appellant) v Birmingham City Council and others (Respondents)* [2007] UKHL 27. The Government has indicated since the judgment that the intention of the Government was that such care homes should be covered by the Human Rights Act and has agreed to table an amendment to correct this position in the Health and Social Care Bill which is currently passing through Parliament.

Have you represented public service users who feel that a public authority has treated them unfairly or in a way that potentially breached legal requirements under the Human Rights Act?

Please tell us about your experiences – positive or negative – using the call for evidence form.

It will only take about 15 minutes to fill in the form and the evidence you give us will be vital in helping to make this inquiry as comprehensive as possible.

To make sure your contribution informs our inquiry report, please send it to us **by 21 June 2008**.

You can send your response:

- by email to: HRI@equalityhumanrights.com
- by fax to: 0207 407 7557 (please send faxes for the attention of the Human Rights Inquiry team)
- by post to the following freepost address:
FREEPOST RRUY-EJHS-CKGT
Equality and Human Rights Commission – Human Rights Inquiry
3 More London, Riverside
Tooley Street
London
SE1 2RG
- if you need to give your response by telephone or textphone, please contact our helpline:
 - For England
Telephone: 08456 046 610
Textphone: 08456 046 620
 - For Wales
Telephone: 08456 048 810
Textphone: 08456 048 820

All your personal information will be kept confidential.

Whichever way you choose to present your evidence, it would be helpful if you could answer the questions set out in the following form. If you need more space to respond to one or more questions please use a separate sheet, labelled with the relevant section number.

Section 1: Your contact details

It will really help us if you can provide your name and contact details in case we need more information. Naturally we will treat this information as confidential (please read our confidentiality statement at the end of this document).

If you wish to remain anonymous, please leave this blank but it would be very helpful if you can complete section 2 about the profile of your organisation.

Your name:

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Section 2: Profile of your organisation

Name of your organisation:

Race On The Agenda

Are you responding on behalf of your organisation or as an individual?

Organisation – see above

Does your organisation provide services to specific group/s? If so which group/s?

Black, Asian and minority ethnic groups (BAME)

ROTA uses the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, colour, nationality or religious practice. This definition includes but is not exclusive to those people of African, Asian, Caribbean, Irish, Jewish, Roma, South East Asian.

Section 3: Questions for representative groups

1. Have you offered support to individuals or used the Human Rights Act yourself to challenge the way an organisation provides services? If so, were some of the articles in the Human Rights Act or its principles explicitly referred to? If not, why not?

ROTA is a policy organisation that works with other organisations to achieve equality and promote a human rights culture in public services and in society more generally. Through our work as a policy think tank we have collected evidence on the application of the Human Rights Act (HRA) in public authorities and beyond. This evidence has been fed into a number of processes and documents but we have not challenged services ourselves.

ROTA has attended the EHRC consultation meeting on the Human Rights Inquiry of 19th June. This written submission complements the oral evidence we have given.

ROTA has given evidence to:

- The Parliamentary Joint Committee on Human Rights on the treatment of older people in healthcare
- The Mayor of London's Health Inequality Strategy
- The EHRC consultation on the Terms of Reference of the Human Rights Inquiry.

All the above submission are relevant and can be found at

www.rota.org.uk

We also think that the following ROTA publications are relevant:

- Restoring Relationships Project
- Building Bridges Project
- The Human Rights Dimensions of Community Cohesion

The following paper by Dr. Gavrielides is also relevant

Gavrielides Theo (2008) "Human rights and customer satisfaction with public services: a relationship discovered", **12:2 International Journal of Human Rights**, pp. 187-202.

2. What do you think would help individuals using the Human Right Act to challenge poor public services?

While collecting evidence for the EHRC commissioned project on the Human Rights Dimensions for Community Cohesion, many respondents said to us that “a human rights is a right only when you know about it”. To build a human rights culture in public authorities there needs to be a two way process whereby service providers respond to their obligations under the Act and consumers are aware of the basic standards they should expect.

The evidence suggests that human rights and equality awareness is particularly low particularly among BAME groups. For example, a 2001 study by Help the Aged and Policy Research Institute showed that BAME older people know very little, or nothing at all, about the available services and the standards they should expect from the authorities that provide them. The study showed that this population tends to receive a different level of service than the average user just because of language difficulties. The poor information received or accessed was also considered to be problematic (Age Concern 2001, Improving Access by black and Minority ethnic elders to Information and Advice Services)

Currently, the term ‘human rights’ does not resonate with individuals who may associate it with totalitarian regimes, political correctness and extreme cases of torture and unlawful killing. However, words such as equality, dignity and respect are highly valued.

Undoubtedly, awareness of our rights whether legislated or not is beneficial. Individuals are entitled to demand their own rights from duty bearers. However, this does not mean that individuals need to become experts in human rights. Put another way, to behave in a manner commensurate with the letter and the spirit of the Human Rights Act should not require expert, or even any, knowledge of the Act or its principles. Rather the aim of the Act should be to create a virtuous circle of human rights behaviour in which service providers fulfil their positive duties, and consumers are able to encourage this behaviour on two fronts. First by expecting service providers to achieve this standard of provision and secondly by themselves displaying ‘human rights friendly’ behaviour. Any concept of rights, and this is especially true of human rights, has to be closely allied to the concept of responsibilities.

There have been studies, which may prove helpful in considering how

best this balance may be achieved. For example, a survey conducted by the Prime Minister Strategy Unit suggested that when reforming any public services to achieve the greatest public value possible: “There is clearly a balance to be struck between involving the public sufficiently to ensure that government actions reflect their preferences and are legitimate, and on the other hand overburdening the public with questions and forms of involvement that are properly the concern of elected representatives and officials” (PMSU 2002). Although the study’s focus was not human rights, its analysis, conclusions and recommendations can be used in the context of this submission.

The Strategy Unit concluded that when the right balance is struck and the consumer is involved appropriately, many benefits accrue. In particular, it suggested the following steps:

- identify the issues on which the public will want to be involved, to obtain citizen views where important but not to be over-demanding;
- provide forums in which citizens/groups can learn about issues, express views, explore scenarios and seek to reach accommodations that can inform policy;
- recognise the limits of ‘revealed preferences’ and exploring the potential of ‘stated preference’ approaches that focus on policy trade-offs;
- recognise that as well as listening to the public, we might also develop techniques that delegate (at least in part) decision making responsibility to the public.

The virtuous circle of human rights and responsibilities is dependent upon a successful engagement of the public. This involves a process of empowerment that can be achieved by providing a level of service that consumers come to expect on the one hand and by providing enough knowledge to enable them to challenge the system when the service is poor. While seeking ways to engage and empower consumers, the following should apply:

- the ultimate goal should be the improvement of the delivery of public services and the better protection and respect of individuals’ rights;
- this process should not over-burden individuals; while
- direct consultation should be sought to identify the best methodologies in using the principles underlying the Human Rights Act and equality legislation to improve the delivery of services.

3. What is your experience of how the Human Rights Act has been used by public authorities?

ROTA has witnessed a failure of culture of respect for equality and human rights in the provision of public services at large. For instance:

- Equality and human rights legislation are not always reflected in institutional procedures, service delivery and internal/ external policies.
- Frontline staff and managers lack awareness of human rights and equality legislation and have negative perceptions of human rights and equalities.
- BAME groups have either low or no awareness at all of their entitlements under human rights and equality legislation and are misinformed about the use and value of human rights. However, they think that values such as dignity, respect and fairness are paramount to the way they are treated by public servants.
- Discrimination and human rights violations are not single-dimensional phenomena. For instance, many older people have multiple needs and can suffer from discrimination based on more than one aspect of their identity; gender, ethnicity, age, disability, sexuality, income, family and social networks, beliefs, material circumstances, nature of migration, area of living, type and level of care needed. For example, many BAME elders have unmet needs which affect their participation in wider society. Many have experienced disruption in their family structures, the challenges of growing older in a country where it may not have been their intention to stay, and a lifetime of discrimination and disadvantage. ROTA has not witnessed yet a culture where healthcare services respond to BAME groups' needs in a way that promotes independence and acknowledges their individuality.
- We are particularly worried about the treatment of BAME older people by public service providers and the latest decision on the definition of what constitutes a public authority increases our fears. Although they might be victims of human rights violations, BAME elders rarely complain or even bring bad treatment to the attention of their families and the relevant authorities. This is due to a combination of factors:
 - o As they rely on care provision, by definition a power imbalance is created between them and their carers. This leads to fears of reprisals and to virtually no complaints. The comparatively small number of human rights cases brought by older people bears evidence to this claim (Human Rights Act Research Project 2002).
 - o There is lack of awareness of their rights and the relevant legislation.
 - o BAME elders value stoicism and feel uncomfortable "grumbling". While with one breath they might "tell a story" of poor treatment by providers,

with the next they would make excuses for them.

o Not all BAME elders have family members with whom they can share their experiences. Therefore, they are often left alone and without a voice.

- BAME elders often face language barriers that not only prevent them from accessing written information, but also from voicing their concerns. According to Age Concern research there are currently very significant numbers of South Asian and Chinese/Vietnamese elders who face language barriers in accessing care services. It is unrealistic to imagine that people who have reached a certain level of maturity can learn a new language.

- It is well documented that people from BAME communities, and African Caribbean people in particular, fare worse under the mental health system. For example, a Sainsbury Centre' report describes "Circles of Fear", through which Black people, over-represented in services and typically having a negative view of the psychiatric profession, are exposed to the rough end of mental health services, yet fail to access the community, primary care and mental health promotion services that might break the cycle (SCMH, 2002, Breaking the circles of fear).

- According to a 2003 study by the Office of the Deputy Prime Minister (ODPM), demographic difference between some population groups may have implications for managing non-discrimination in service delivery. In terms of geographical location, BAME people, gays and lesbians and some faith communities are more likely to be settled in large urban areas than elsewhere. A consequence of this is that while some large, urban authorities may have developed appropriate services for these groups, other authorities may believe that it is not necessary for them to do so as numbers are small and or/unknown (ODPM 2003). For example, it is likely that there are fewer human rights breaches related to race, faith or ethnicity in non-urban areas due to the smaller numbers of minority groups. According to a study by Lakey, within a given local authority area different BAME people may or may not be present (Lakey et al 2001: 186). They may also be differentially spatially placed within the authority's geographical area. It is important to note, however, that real settlement patterns as measured by the census may not match local beliefs about settlement patterns. A study by Back and Solomos called this 'an imagined racial geography of an area (Back and Solomos). They also showed that some BAME populations may also be more visible than others; this may be reflected in local authority policy and service management and delivery.

- Some BAME groups, particularly Muslim and Sikh, need to be provided with services that take into account their religious beliefs and practices.

4. Do you have any good practice examples of public authorities which you think are using the Human Rights Act in providing services (such as treating service users with dignity and respect)? Could you please explain in which way you think that this represents good practice?

Best practice examples can be found in the following publications:

Ministry of Justice (2008) Human Rights Insight Project

Gavrielides Theo (2008) "Human rights and customer satisfaction with public services: a relationship discovered", 12:2 International Journal of Human Rights, pp. 187-202.

Gavrielides Theo et al (2008) Restoring Relationships: Addressing hate crime through restorative justice and multi-agency partnerships, ROTA: London

Also read:

- The Audit Commission 2004 "The Journey to Race Equality" and 2003 "Human Rights: improving public service delivery". These reports outlined the value equality and human rights legislation and principles can have in the provision of better public services, particularly those related to healthcare. The Commission concluded: "The Human Rights Act can help to improve public services, as it seeks to ensure the delivery of quality services that meet the needs of individual service users". The reports are useful guides with best practice examples and concrete recommendations on how to use human rights and equality principles to improve public service delivery. Case studies include:
 - o Several social services departments amended their policies and procedures for mental health, working effectively with interpreters.
 - o A local authority revised its policy for adult care services working with asylum seekers to ensure those who have special needs are treated fairly without discrimination.
 - o Westminster Council mainstreamed human rights in its core processes. This included frontline officers such as social workers. This proved beneficial in the drafting of new policies and procedures as well as in the treatment of individuals.
 - o A health trust conducted policy reviews of consent and resuscitation policies, violence and aggression policies, selection of recruitment and disciplinary policies, patient control and restraint policies.
 - o A health trust strengthened its harassment and bullying policies using the Human Rights Act.

5. What do you think the barriers are for public authorities in using the Human Rights Act and how do you think they can be overcome?

Barriers:

- Awareness of the value of human rights
- Workload
- Human rights being seen as distant and irrelevant to their work
- The HRA being seen as a political instrument
- Media

Solutions – see below question 6.

6. What do you think would help public authorities to use the Human Rights Act more effectively?

The Human Rights Act was introduced in the hope of gradually contributing to the development of a new framework where individuals' human rights are better protected and respected by public services. During the Bill's passage through Parliament, the Parliamentary under-secretary of State for the Home Department said that one of the results of the new Act "will be the beginning of the strong development of a human rights culture" (O'Brien, 1998). In 1999, the then Home Secretary Jack Straw said: "Culture is one of those words that gets used to mean a whole of different things – and sometimes nothing at all. What do we mean when we talk of building a culture of rights and responsibilities in the UK? These aren't empty words or mere jargon. It's what we want the whole public services in this country to move towards" (Straw, 1999).

The Government made clear that the changes the Human Rights Act was intended to bring about in public services went beyond strict legal compliance, to provision that was "habitually, automatically responsive to human rights considerations" (Lord Irvine, 2001), recognising users' individual needs and protecting the vulnerable. These aspirations are far from being met; the potential for human rights to improve public service delivery and the experience of users are yet to be explored.

ROTA identifies the following strategic steps in gradually bringing about a human rights culture in public services that acknowledges BAME individuals human rights.

- The need for guidance: Most public authorities are struggling to implement a proactive human rights strategy that acknowledges the individuality of BAME individuals. Examples where public services have been improved as a result of applying a human rights approach should be used as case studies to guide policy development. The guidance should include clear summaries of the practical implications of the Human Rights Act and its principles, together with an interpretation of the relevant case law illustrated with examples of the following:
 - o "the "positive obligations" doctrine,
 - o how Convention rights like "private and family life" have been interpreted by the UK courts and the European Court of Human Rights,
 - o the underlying concepts of fairness, respect, equality and dignity (and how these have addressed by the courts),
 - o applying the test of "proportionality" to the "qualified" rights (Articles 8 – 11), and

o balancing competing rights (such as private and family life as against the right to free association in noisy neighbourhoods)”

- The need for a “business case” for human rights: Public authorities view human rights and equalities as an additional burden requiring extra resources and support, rather than as fundamental, and integral to their work. To convince them otherwise, a strong “business case” will need to be prepared. The cornerstone of any business case for mainstreaming human rights must be that the Human Rights Act is law already, applies to all public authorities and protects everyone in this country; and therefore public authorities have no choice but to comply with it. Even compliance may be insufficient to remove the risk of legal challenges, bad publicity and compensation payments, however - unless it takes into account not only the letter of the Act but its ‘spirit’ and the underlying principles such as dignity and respect for everyone

- Raising awareness among BAME groups: Assisting BAME groups to make the link between the principles of fairness, respect, equality and dignity and the Human Rights Act would enable them to call for improved services. The gap that seems to exist between the Act’s underlying principles and the human rights language needs to be addressed. To achieve this, the Government needs to explain the principles and their importance as the source of the articles. It should also present human rights as tools to assist in improving public services and as a charter for the public to demand better services. Finally, human rights need to be promoted as justiciable entitlements that guarantee protection for people where the law has been violated.

- Human rights and equality: partners rediscovered. There are strong conceptual links between human rights and equality, while human rights can help fill gaps in equalities legislation such as the lack of protection for older people in relation to service provision. There should be merit in implementing equality and human rights standards together, to avoid imposing new regulatory burdens.

- The role of the inspectorates and regulators:
 - o Audit Commission: Among the inspectorate bodies, the Audit Commission had pioneered work on the Human Rights Act and had reportedly found some evidence of better decision-making and improvements in practice within those public authorities which had adopted a human rights strategy. The Commission had proposed that “user focus, diversity and human rights will be integral elements of the new corporate assessment” (Audit Commission 2004). A self-

assessment tool specifically for human rights had been developed enabling public authorities to provide online answers.

- o Healthcare Commission: After a 2004 consultation, the inspectorate had reviewed the way it assessed compliance by healthcare organisations. Their 2005 report stated that the new approach will include “promoting respect for human rights and diversity in the delivery of health care “(Healthcare Commission 2005).

- o Commission for Social Care Inspection: The Commission is developing an ‘equalities and diversity’ framework and a delivery programme integrating its human rights activity. Inspections carried out by this body make no distinction between private and public care homes – highlighting the urgency with which the definitional issue needed to be resolved.

There is value in engaging the relevant inspectorates and regulators to encourage public authorities to mainstream human rights in their service delivery, through:

- o the inspection process – where a common approach would be desirable;
- o providing guidance, self-assessment tools and examples of best practice;
- o undertaking evidence-based research;
- o highlighting poor practice;
- o identifying best practice;
- o measuring change;
- o pursuing a systematic picture of activity and outcomes that are informed by human rights thinking;
- o providing an independent overview of service delivery through existing mechanisms without adding additional regulatory burdens.

- o Identifying the indicators of a mainstreamed human rights culture in public authorities. Healthcare services will need to be provided with indicators that would demonstrate the mainstreaming of human rights.

These could be:

- o a corporate approach to human rights;
- o the type and extent of training provided to staff;
- o reviews of procedure and policy;
- o changes in the way that services are delivered;
- o human rights specifications in contracts between public authorities and contractors;
- o information on human rights and equality standards to be provided to the public;
- o effective arrangements for participation by users.

Each public authority should be allowed to develop its own methodology for adopting these measures, in order to engender ownership and a greater likelihood of improved outcomes. Any targets associated with these measures should avoid creating additional burdens for public authorities.

- Provide human rights training: In order to incorporate the Human Rights Act underlying values into public service delivery and raise awareness about BAME groups' needs, individuals engaged in designing and delivering healthcare services to them will have to receive training. This is something that the EHRC will need to include in its workplan.

- Applying the 'stick and carrot' approach: Existing award schemes such as the Beacon Council scheme (ODPM), the Charter Mark and the Guardian Public Services Awards could be adapted to reflect human rights principles, and a new award for Human Rights in Public Services could be considered.

- Working with the voluntary and community sector: Only in London, there are over 40,000 voluntary and community (VCS) groups. Commentators have repeatedly stressed the important role of the VCS in promoting a feeling of empowerment and belonging in community groups. Organisations working in the VCS help maintain a balance between community groups often feeling isolated and let down by public services and government. The VCS establishes communication channels between individuals and government bodies, and enable small and large minority groups to have a say in policymaking, legislation and regulation of the country's affairs. Moreover, the VCS is a an employer especially of volunteers and of communities that cannot find jobs easily in the other sectors e.g. refugee people, asylum seekers, ex-offenders and people with multiple disadvantages. The vast majority of VCS activity takes place at a local level, often addressing the needs of society's most disadvantaged groups. As partners, providers and advocates, VCS organisations are ideally placed to work with local authorities to achieve results for local people - improving the quality of life and the quality of services in every area and encouraging strong and cohesive local communities. Therefore, regional governance bodies and strategic structures are increasingly relying on the VCS to help deliver on their human rights, equality, community cohesion and integration agendas. More importantly, they rely on the VCS and infrastructure organisations in particular, to provide a voice for 'hard to reach groups'. Statistics also show that the public trusts the VCS more than other

sectors particularly in relation to equalities and human rights work. However, there is evidence to suggest that government does not engage with the VCS adequately. There is also low level of awareness of the Human Rights Act. The EHRC and the government should see the VCS as a key partner for improving older peoples' human rights. The BAME VCS has been particularly active in this area.

Confidentiality statement

If you are thinking of giving evidence to the inquiry but you have something that you want to keep confidential, please read this page which sets out the Equality and Human Rights Commission's position on confidentiality and disclosure of information.

If you still have concerns after reading this page and want to discuss these in confidence, you can email the inquiry team at HRI@equalityhumanrights.gov.uk.

The Equality Act 2006 (EA) sets out specific rules relating to information received by the Equality and Human Rights Commission when carrying out an inquiry under section 16 of the EA:

- section 6 of the EA says that information acquired by the Equality and Human Rights Commission in the course of an inquiry must not be disclosed by the Equality and Human Rights Commission except where any of the following apply:
 - with the consent of each person to whom the information relates
 - in the report of the inquiry
 - for the purposes of carrying out the Equality and Human Rights Commission's functions in relation to its enforcement powers
 - in pursuance of an order of a court or tribunal
 - if the information is anonymised so that no one to whom the information relates can be identified
 - for the purposes of civil or criminal proceedings to which the Equality and Human Rights Commission is party
 - if the information was acquired by the Equality and Human Rights Commission more than 70 years before the date of disclosure.
- section 16 of the EA sets out the rules which apply when the Equality and Human Rights Commission wants to record in its report of an inquiry evidence or findings of an adverse nature about the activities of a specified or identifiable person. These rules include giving that person the right to make written representations on the draft report.

We will not disclose information received from you or your organisation during the inquiry unless it falls within the limited circumstances set out in section 6 (3) of the EA. However, we may include it in the report of the inquiry and this may be in a way which means that you or your organisation will be identifiable. If you do not wish us to include information about you or your organisation in the report of the inquiry then please contact us to discuss this. We will be sensitive to any concerns you have about disclosure and we hope that you will feel confident in reporting any issues to us, including sensitive human rights issues you might have experienced or know about.